NO. 649

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

BEN F. RAY, AS CHAIRMAN OF THE STATE DEMOCRATIC EXECUTIVE COMMITTEE OF ALABAMA, *Petitioner*,

v.

EDMUND BLAIR, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA.

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INDEX.

CITATIONS.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA.

Ben F. Ray, as Chairman of the State Democratic Executive Committee of Alabama, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Alabama, entered in the above-entitled case on February 29, 1952, affirming a judgment of the Circuit Court of Jefferson County, Alabama.

OPINIONS BELOW.

The opinion of the Circuit Court of Jefferson County, Alabama (R. .....) is unreported. The opinion of the Supreme Court of Alabama (R. .....) is not yet reported.

JURISDICTION.

The judgment of the Supreme Court of Alabama was entered on February 29, 1952. (R. .....) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

Petitioner in the court of first instance and in the Supreme Court of Alabama contended that respondent had not adequately presented in his pleadings the question of whether or not the action of the State Democratic Executive Committee of Alabama violated the Federal Constitution. Nevertheless, the federal question was fully argued at each stage of the litigation below, and both courts below based their judgments squarely on a federal question,—holding that the action complained of violated Article II, Section 1 and the Twelfth Amendment of the United States Constitution. The Alabama Supreme Court stated (R. ..):

> "The theory on which the petitioner claims the right to become a candidate in the primary without taking the prescribed oath is that the Twelfth Amendment, supra, gives electors therein provided for the right to be free to vote for a president and vice-president of the United States without compulsion on the part of any organization or authority. That said right of freedom in that respect is a constitutional right. Therefore, the State Democratic Executive Committee has no power to require them to forego that right of freedom as a condition to become a candidate in the primary held pursuant to the laws of the State of Alabama."

That Court explicitly based its decision solely upon a determination of the federal question (R. .....):

> "So that the decisive inquiry here is whether the Twelfth Amendment confers on electors freedom to exercise their judgment in respect to voting in the electoral college for a president and vice-president."

Further (R. .....):

> "The question is a federal one, and there has been no authoritative pronouncement as to it. So that we are free to apply the plain logic of the situation, which is the plain meaning of the Twelfth Amendment."

QUESTIONS PRESENTED.

1. Do Article II, Section 1, and the Twelfth Amendment of the United States Constitution prohibit a state, by legislative or administrative action, or by a combination of legislative and administrative action, from requiring presidential electors to cast their electoral votes for President and Vice-President of the United States for the candidates of the political party under the auspices of which the electors were elected?

2. Do Article II, Section 1, and the Twelfth Amendment of the United States Constitution prohibit a political party from requiring its candidates for presidential elector, as a condition for seeking primary nomination as such candidates, to pledge that if elected they will vote for the presidential and vice-presidential nominees of the party?

Conversely, do those provisions of the Federal Constitution require that a political party permit a person to become a candidate for the party's nomination for presidential and vice-presidential electors, even though that person states that if elected he will *not* cast his electoral ballot for the party's nominees for President and Vice-President?

3. Do Article II, Section 1, and the Twelfth Amendment of the United States Constitution create constitutionally protected and legally enforceable rights in favor of a person seeking primary nomination as candidate for presidential elector?

4. Has the Supreme Court of Alabama correctly interpreted and applied Article II, Section 1, and the Twelfth Amendment of the United States Constitution?

STATUTES INVOLVED.

The relevant statutory provisions are printed in Appendix "A", *infra*.

STATEMENT.

Respondent petitioned the Circuit Court of Jefferson County, Alabama, for mandamus to command petitioner, as Chairman of the State Democratic Executive Committee, at least forty days prior to May 6, 1952, to certify respondent to the Secretary of State of Alabama as a candidate for presidential and vice-presidential elector in the Democratic primary election to be held May 6, 1952. (R. .) The petition showed that a resolution of the State Democratic Executive Committee of Alabama, adopted January 26, 1952, set out the exact language of the declaration of candidacy to be submitted by persons seeking to become candidates in the 1952 primary. The declaration is as follows:

> "I hereby declare myself to be a candidate for the Democratic nomination (or election) in the primary elections to be held on Tuesday, the 6th day of May, 1952, and on Tuesday, the 3rd day of June, 1952, for the office of . I hereby certify that I did not vote, in the general election held in November, 1950, a Republican ticket or any independent ticket, or the ticket of any party or group, other than the *Democratic Party*, or for any one other than the nominees of the *Democratic Party*, or any ticket other than the *Democratic ticket*, or *openly and publicly in said general election oppose the election of the nominees of the Democratic Party*, or any of them. I further agree to abide by the result of the primary elections in which I am a candidate and I do pledge myself to aid and support all the nominees in said Primary Elections, *and also the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States.* I further certify that I am a qualified elector of the State of Alabama and possess the qualifications fixed by law for the office for which I am a candidate, and if a candidate for the Democratic nomination for Judge of a Court of Record, I do further certify that at the time of filing this declaration of candidacy, I am not under disbarment or suspension." (Emphasis supplied.)

The declaration of candidacy filed by respondent departed from the prescribed form in several particulars. Principally, respondent omitted entirely the pledge required of all candidates to aid and support "the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States."* Respondent inserted the following statement in his sworn declaration of candidacy:

> "I will not cast an electoral vote for Harry S. Truman or for any one who advocates the Truman-Humphrey Civil Rights Program."

The Circuit Court forthwith ordered petitioner to appear and show cause why a writ of mandamus should not issue commanding him to certify appellee as prayed. (R. .) After hearing, that court issued a peremptory writ of mandamus ordering respondent's certification not less than forty days prior to the primary elections to be held on May 6, 1952. (R. .)

At the Circuit Court hearing, respondent, when asked whether, if elected as a presidential elector, he was willing to aid and support the nominees of the 1952 National Convention of the Democratic Party, replied to the effect that he would not support President Truman or anyone sponsored by President Truman or anyone who supported "anti-South" legislation. (R. .) When asked whether he was willing to vote for General Eisenhower or other potential Republican nominees for President, respondent answered that he "didn't know," that he might not cast his vote at all in the electoral college that he might resign so

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* The basic Alabama statute (Alabama Code, Title 17, Section 347) provides that "Every state executive committee of a party shall have the right, power and authority to fix and prescribe the political or other qualifications of its own members, and shall, in its own way, declare and determine who shall be entitled and qualified to vote in such primary election, or to be candidates therein . . ." Pursuant to this statute, the Alabama Democratic Executive Committee adopted a resolution setting forth qualifications for candidacy in the Democratic primary, including the pledge to support the party's nominee for President and Vice-President, already referred to above.

another could vote in his stead. In response to further questions, he replied that he did not know what he would do if elected, but that his purpose was to oppose any candidate advocating an "anti-South" program.

The Circuit Court judges indicated that their judgment was based solely on the ground that the Committee's qualifications for Democratic primary candidates for presidential elector violated Article II, Section 1, and the Twelfth Amendment of the Federal Constitution, in that a restraint was imposed on the free exercise of discretion in casting an electoral ballot.

On appeal, the Alabama Supreme Court affirmed, (R.) holding that the Committee pledge violated Article II, Section 1, and the Twelfth Amendment of the Federal Constitution. The Court reasoned that these constitutional provisions conferred upon presidential electors a right to exercise free and unfettered votes for President and Vice-President, without regard to the nominees of the National Conventions. The Court held that these constitutional sections prohibited the Democratic Party from requiring a pledge from persons attempting to run in a Democratic primary for nomination as Democratic candidate for presidential and vice-presidential electors to cast their electoral ballots for the nominees of the Democratic National Convention. And the Court further held that Article II, Section 1, and the Twelfth Amendment of the Federal Constitution created legally enforceable and constitutionally protected rights in the electors themselves. (R. .)

Two justices of the Alabama Supreme Court dissented, (R. .) stating that even if candidates for presidential electors, after election, may have a right to cast a free and unpledged electoral ballot, the Twelfth Amendment guarantees them no right to go to the electoral college by any certain primary election route.

Both lower courts apparently recognized the statutory powers of the Democratic Executive Committee to fix political and other qualifications as a prerequisite for par-

ticipation in the Democratic primary as a candidate or as a voter. But because of supposed Federal constitutional proscriptions, the lower courts denied the existence of such powers where elector-candidates are concerned.

There is extreme urgency in this case. Petitioner has been ordered to certify respondent to the Secretary of State of Alabama as a candidate for elector in the May 6, 1952, primary, on or before March 27, 1952. Petitioner does not urge a prompt decision in this Court out of fear of mootness, if the case is decided before the November election, but in order to avoid confusion and uncertainty as to the legal status of those primary candidates who have not met the Committee's qualifications. If this Court grants certiorari and upholds the Committee's elector-candidate qualifications, those candidates who have not pledged themselves in accordance with the Committee requirements will not appear legally on the primary ballot, nor can they be legal nominees of the primary elections.

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of Alabama erred:

1. In holding that Article II, Section 1, and the Twelfth Amendment of the United States Constitution prohibit a state, legislatively or administratively, or by a combination of legislative and administrative action, from requiring presidential electors to cast their electoral votes for President and Vice-President of the United States for the candidates of the political party under the auspices of which the electors were elected.

2. In holding that Article II, Section 1, and the Twelfth Amendment of the United States Constitution prohibit a political party from requiring its candidates for presidential electors, as a condition for seeking primary nomination as such candidate, to pledge that if elected they will vote for the presidential and vice-presidential nominees of the party.

3. In holding that Article II, Section 1, and the Twelfth Amendment of the United States Constitution require that a political party permit a person to become a candidate for the party's nomination for presidential and vice-presidential elector even though that person states that he will *not* cast his electoral ballot for the party's presidential and vice-presidential nominees.

4. In holding that Article II, Section 1, and the Twelfth Amendment of the United States Constitution create constitutionally protected and legally enforceable rights in favor of a person seeking primary nomination as candidate for presidential elector.

5. In holding that a person seeking primary nomination as a candidate for presidential elector has legal standing to invoke a judicial determination of whether or not such electors may be pledged to cast their ballots for the presidential and vice-presidential nominees of the political party whose endorsement they carry.

6. In holding that the action of the State Democratic Executive Committee of Alabama deprived respondent of any Federal constitutional right.

7. In affirming the judgment of the Circuit Court of Jefferson County, Alabama.

REASONS FOR GRANTING THE WRIT.

In the application for stay which was filed on March 10, 1952, the reasons for granting the writ of certiorari were summarized as follows:

> "*First:* The case involves the constitutionality, under the Federal Constitution, of a procedure carrying out a state statute.
>
> "*Second:* The question decided below has not heretofore been decided by this Court.
>
> "*Third:* The decision below conflicts with, and jeopardizes, the historic policy of the Constitution and

of this Court to commit to the State legislatures the procedure for the selection of electors.

"*Fourth:* The decision of the Alabama Supreme Court conflicts with the election procedure established by statute in at least 21 states.

"*Fifth:* The decision below conflicts with the procedure which has been established for more than 150 years and approved by this Court, whereby the electors perform a mere ministerial act, as agents of the voters who choose them, when they cast their ballots for President and Vice-President."

While the five reasons for granting certiorari enumerated above speak for themselves, a few detailed aspects of the matter merit further discussion.

1. The decision of the court below in the instant case is not in accord with statements of this Court interpreting and applying Article II, Section 1, and the Twelfth Amendment of the United States Constitution. In *In Re Green*, 134 U. S. 377, 379 (1890), this Court said:

> "The sole function of the presidential electors is to cast, certify and transmit the vote of the State for President and Vice-President of the nation."

In *McPherson* v. *Blacker*, 146 U. S. 1, 36 (1892), holding that Michigan could constitutionally provide that electors were to be selected by popular election in districts, this Court stated that electors are chosen "simply to register the will of the appointing power in respect of a particular candidate." And: "In relation, then, to the independence of the electors the original expectation may be said to have been frustrated." (ibid.) This Court added that ". . . the Constitution has been found in the march of time sufficiently applicable to conditions not within the minds of its framers and not arising in their time. . . ." (ibid.)

The decision below is in direct conflict with the decision of the highest court of Nebraska in *State ex rel. Nebraska*

Republican Committee v. *Wait,* 92 Neb. 313, 138 N. W. 159 (1912). That court affirmed an order to the Nebraska Secretary of State to remove from the Republican column on the ballot electors pledged to Roosevelt, and to replace them with electors pledged to Taft.

The decision below conflicts directly with the decision of the highest court of Texas in *Seay* v. *Latham,* 143 Tex. 1, 182, S. W. 2d. 251 (1944). Here, after the Texas Democratic Convention had replaced previously nominated elector candidates opposed to Roosevelt and Truman with favorable elector candidates, mandamus issued to the Texas Secretary of State to compel a cancellation of the prior certification and a similar replacement.

The decision below conflicts inferentially with other state court decisions which will be cited, *infra.*

The decision below conflicts directly with the statutes of California (California Election Code, Sec. 10555) and Oregon (Oregon Code, Sec. 81-503(a) requiring electors to vote for their party's presidential and vice-presidential nominees.

The decision below conflicts with the statutes of twenty-one states which direct that the names of elector candidates be omitted entirely from the ballot. See, Appendix B.

Since the decision below squarely conflicts with what appears to be a uniform legislative and judicial interpretation of the meaning and effect of Article II, Section 1, and the Twelfth Amendment of the Federal Constitution, a definitive ruling herein from this Court is imperative.

2. The Supreme Court of Alabama has declared that the Constitution of the United States guarantees absolute discretion to presidential and vice-presidential electors to cast their electoral vote for anyone they please. And the Supreme Court of Alabama has held that by constitutional command this discretion may not be restricted by a political party even to the extent of exacting a pledge from persons seeking to become candidates for elector in the party's primary that if elected they will support the party's nominees for President and Vice-President.

The Supreme Court of Alabama has decided the question in a way that runs counter to more than one hundred and fifty years of custom and tradition in the nomination and election of presidential electors.

> "Political parties have made the nominations since 1792, and the presidential electors merely register the will of the state pluralities. That they should do so is now an unwritten convention quite as strong as any provision of the written constitution; and although some state legislatures appointed presidential electors as late as 1860, a popular vote has become the accepted and universal method. It is interesting to note that in this one department where the Federal Convention was largely without experience, it created a clumsy system which had to be supplemented by the Twelfth Amendment and by the intervention of political parties." 1 Morison and Commager, *Growth of the American Republic*, p. 291.

To the same effect, see, 2 Story, *Constitution*, 5th Ed., p. 312; *In Re Green*, 134 U. S. 377, 379 (1890).

For more than a century and a half the voters of this country have registered, in effect, a direct choice for President and Vice-President of the United States. Electors have consistently and uniformly done no more than reflect the wishes of the parties under whose auspices they have run. This tradition is so well established that in twenty-one of the states of the United States electors' names do not appear on the ballot; the voter marks his ballot for the actual presidential and vice-presidential nominees. (See Appendix B.)

The decision of the Supreme Court of Alabama takes from the voters this awesome power of electing the President and Vice-President of the United States, and holds that this power is in the electors to be exercised absolutely, without requisite response to the registered will of the voters. The decision holds, moreover, that any restraint on the unbridled discretion or caprice of the individual elector is forbidden by the Constitution of the United States.

This decision below, placing a novel judicial construction on Article II, Section 1, and the Twelfth Amendment of the United States Constitution, effects a profound change in the relationship of the voters of this country to the highest elective offices in the land. Every decision of the highest court of a State interpreting the Federal Constitution has repercussions that are nation-wide. But since the decision of the Alabama court affects solely the election of the President and Vice-President of the United States, the Alabama decision has as direct and as vital effect on the voters of Oregon or Massachusetts as on the voters of Alabama. It is a truism that in the election of President and Vice-President, the electoral votes of one state are equally important to those interested in the election as are the same number of electoral votes from any other state. This Court should not permit the novel and sweeping decision below to stand without review.

The practical consequence of permitting electors to vote as they please without regard to the political parties under the auspices of which they run was considered by the Supreme Court of Nebraska in *State ex rel. Nebraska Republican Committee* v. *Wait*, 92 Neb. 313, 138 N. W. 159 (1912). The Nebraska court stated at page 162:

> "By the acceptance of that nomination at the hands of persons 'affiliating with the Republican Party,' they (electors) pledged themselves to discharge their duties, if elected, by voting for the candidates for President and Vice-President who should be subsequently nominated by the national convention of that party. We are all agreed that any other construction would be farcical."

Moreover, if the decision of the Alabama Supreme Court is correct, then the average voter can have no assurance as to how the electors for whom he may vote will cast their electoral ballots. In the words of the Nebraska Court in the *Wait* case at page 165:

> "By far the greater number of voters do not know the various candidates for electors; but they do know

> for whom they want to vote for President and Vice President. They have been in the habit in the past of voting a straight ticket, and particularly so for presidential electors. It is rare, indeed, that a voter 'scratches' that part of his ticket. He votes for entire strangers about whom he has never read, or made inquiry, because of the fact that they stand for the candidates whose election he desires. To deprive the voters who desire to vote a straight Republican ticket of the opportunity of doing so, and at the same time afford such opportunity to the voters of the other parties named, would be repugnant to every sense of honor, and would be in defiance of the just rule that important privileges and partisan advantages cannot be conferred upon one class and denied to another class by hampering it with unfair and unnecessary burdens and restrictions."

And to the same effect see *Spreckles* v. *Graham*, 194 Cal. 516, 531, 228 P. 1040 (1924).

A consideration of the State of New York demonstrates the impracticality of the Alabama Court's construction of the Constitution and its sweeping effect if regarded as the law of the land. Under the Alabama Court's interpretation of the Constitution, the New York voter cannot be sure that a candidate for elector will cast his electoral ballot for the presidential nominee of the elector's party. It would be incumbent on the New York voter to inquire into the personal political backgrounds of all the candidates to determine which forty-seven candidates for elector would probably cast their electoral ballots for the voter's choice for President and Vice-President. The vast majority of the voters of this country would be shocked to learn that the Constitution of the United States prevents their getting binding assurances from candidates for elector that they will vote for the nominees of their party.

The Alabama Supreme Court's decision has a profound effect not only on the voters but on political parties in this country. Petitioner submits that the decision of the Alabama Supreme Court greatly weakens the party system in

this country and leaves political parties less able to perform their vital role in our form of government. The minimum requirement for effective party government would seem to be that candidates who seek to run as electors in a party primary pledge themselves to vote for the choice of the party if elected. In many states it is apparently assumed that all candidates who seek the party's nomination for elector will cast their ballot for the presidential nominee of the party. The decision below in holding unconstitutional the effort of the party to articulate this pledge has struck at the basis of the silent assumption as well as the pledge itself. Moreover, the requirement of the pledge was instituted by the State Democratic Executive Committee on the strength of an Alabama statute expressly conferring on the Committee "the right, power and authority to fix and prescribe the political or other qualifications of its own members, and . . . who shall be entitled and qualified to vote in such primary election, or to be candidate therein . . . ." Alabama Code, Title 17, Section 347. The pronouncement by the Supreme Court of Alabama that Article II, Section 1, and the Twelfth Amendment forbid a political party from placing any restraint on those who seek to run for elector under its auspices should not go unreviewed by this Court.

3. The decision of the court below is believed to be erroneous. The decision probably conflicts with applicable decisions of this Court; it directly conflicts with judicial decisions and legislative acts of several states; it is at war with the uniform interpretation of Article II, Section 1, and the Twelfth Amendment of the Federal Constitution by constitutional writers and historians; and it is contrary to the traditional and continuous operation of the electoral system almost since its inception.

Petitioner will elaborate on the errors below in the succeeding section of this petition.

ARGUMENT.

A.

The court below has erroneously interpreted and applied Article II, Section 1, and the Twelfth Amendment of the Federal Constitution. The decision below is discordant with decisions of this Court and of other courts, with legislative enactments, and with long standing custom and tradition in this country.

The Alabama holding effectively deprives the voters in that state of the opportunity of effective choice of a President of the United States. Electorates in all other states are also directly affected in this regard. And the efficacy of the two-party system is dangerously imperiled.

Article II, Section 1, and the Twelfth Amendment grant plenary power to the State legislatures to appoint electors. *McPherson* v. *Blacker*, 146 U. S. 1 (1892). This Court there held that legislatures had been given the exclusive method of effecting the object; that the Constitution gave the legislatures broad discretion, not only as to the mechanics of appointment, but as to the qualifications which the electors themselves must have.

Alabama's Democratic electors are nominated by primary election. This is not compulsory, but a matter for determination by the governing body of the party. Title 17, Section 336, Code of Alabama 1940. That body may set political and other qualifications for primary participation as voter or candidate. Title 17, Section 347, Code of Alabama. A candidate in a primary election must be eligible to vote and politically qualified in order to secure a place on the ballot. Title 17, Section 345, Code of Alabama. The Committee Chairman must certify the names of candidates to the Secretary of State forty days prior to the primary election. Title 17, Section 344, Code of Alabama. But he is to receive and certify only declarations of candidacy "in the form prescribed by the governing body of the party." Title 17, Section 348, Code of Alabama. (There is

no dispute that the State Democratic Executive Committee of Alabama is the governing body of the party.) The pledge, quoted in the "Statement," supra, and adopted pursuant to the statutes cited above, is a prerequisite for primary participation. But both courts below have held this pledge unconstitutional as to primary candidates for Democratic nominee for presidential elector.

It is noteworthy that Title 17, Section 350, Code, enacted in 1931, contains a similar pledge for voters in primaries. (Until the events of 1948 when Democratic electors in Alabama voted against President Truman, the phrase in Section 350 requiring voters to aid and support primary nominees was thought sufficient to guarantee support of National Convention nominees for President and Vice-President, since electors had always voted automatically for them. The 1952 resolution merely spells this out.) An Alabama statute required electors to vote for their party's nominee. Title 17, Section 226, as amended in 1945. (See Appendix A.) But the Alabama Supreme Court opined that this statute violated the Federal Constitution. *Opinion of the Justices*, 250 Ala. 399, 34 So. 2d. 598 (1948).

This Court, in *McPherson*, stated that electors are chosen "simply to register the will of the appointing power in respect of a particular candidate." (146 U. S. 1, 36.) "In relation, then, to the independence of the electors the original expectations may be said to have been frustrated." (ibid.) But only the "expectations" of some may be said to have been disappointed. For: "... the Constitution has been found in the march of time sufficiently comprehensive to be applicable to conditions not within the minds of its framers and not arising in their time. . ." (ibid.)

The fundamental fallacy in the opinion below is an assumption that there is a prohibition of some sort in the Federal Constitution prescribing any control of electoral discretion. Such a prohibition is non-existent. Article II, Section 1, provides merely that: "Each state shall appoint, in such manner as the legislature thereof may direct, a

number of electors. . . . The electors shall meet in their respective states, and vote by ballot for two persons. . . ." The Twelfth Amendment provides: "The electors shall meet in their respective states and vote by ballot for President and Vice-President. . . ."

Where is the "plain meaning" and "plain logic" upon which the Alabama Court relied, without citation of any authority whatsoever? Certainly, it cannot be seriously contended that pledged electors are unable to "meet" and "vote."

Some of the framers may have expected freely exercised discretion, but the organic document itself did not require it. And, when the Twelfth Amendment was adopted, it was quite apparent that popular choice through political parties would dictate electoral college vote. See, *Chapman* v. *King*, 154 F. 2d. 460, 461 (5th Cir. 1946).

This Court's earlier statement in *In Re Green*, 134 U. S. 377, 379 (1890) has been quoted in the preceding section of this petition. Thus, this Court has apparently approved the demise of the fiction of electoral discretion.

Justice Story wrote on the question involved:

> ". . . (N)othing is left to the electors after their choice but to register votes which are already pledged; and an exercise of an independent judgment would be treated as a political usurpation, dishonorable to the individual, and a fraud upon his constituents." (2 Story, *Constitution*, 5th Ed., p. 312.)

See also, the statement of Morison and Commager quoted in the preceding section of this petition.

The court below decided something which the framers of the Federal Constitution did not express in the document. The Constitution itself grants plenary powers to the state legislatures to appoint electors. *McPherson* v. *Blacker*, supra. But the court below refuses to allow the legislature of Alabama to exercise the power actually conferred, and rewrites the Constitution to fit its own notions of what the framers intended, without a clue of that intent

from the document. These ideas disregard the actual operations of the electoral process almost since its inception, as well as interpretive statements from this Court and other courts.

The intent of the constitutional framers varied:

> "Gerry proposed that the choice should be made by the State executives; Hamilton, that the election be by electors chosen by electors chosen by the people; James Wilson and Gouverneur Morris were strongly in favor of popular vote; Ellsworth and Luther Martin preferred the choice by electors elected by the legislatures; and Roger Sherman, appointment by Congress. The final result seems to have reconciled contrariety of views by leaving it to the state legislatures to appoint directly by joint ballot or concurrent separate action, or through popular election by districts or by general ticket, or as otherwise might be directed." (*McPherson* v. *Blacker*, 146 U. S. 1, 28.)

As this Court indicated in *McPherson*, the final draft of the Constitution represented a compromise of conflicting views on the method of electing a President. But, the outstanding fact emerging from any historical analysis of these sections is that the framers intended that the individual states should prescribe the method of appointing electors, and the qualifications which the electors should possess. Indeed, the constitutional silence on the matter of free electoral choice may well have been purposeful and essential since some of the leading framers strongly advocated a direct election of the President.

The lower court has bound the Federal Constitution to the unfounded fears of some people living in 1787—fears not expressed in the organic document itself. In this connection, a statement of Mr. Justice Holmes, in *Missouri* v. *Holland*, 252 U. S. 416, 433 (1920), is pertinent:

> ". . . (W)hen we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been

> foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation."

The decision below seems to require explicit Constitutional authority for the Committee resolution. But there is no express or implied constitutional interdiction of the action. The burden is not on the proponents of the Committee action to prove its validity. The attackers must find explicit prohibitions.

California and Oregon statutes have been mentioned:

The California, Election Code, Section 10555, provides:

> "The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice-President of the United States, who are, respectively, the candidates of the political party which they represent. . . ."

The Oregon Code, Section 81-503(a) provides:

> "Said candidates (for presidential electors) shall pledge themselves, if elected, to vote for their party's nominee for President and Vice-President of the United States in the electoral college."

The legislatures of twenty-one states have refused to tolerate the fiction of electoral discretion, and have provided that the names of the electors shall not appear on the ballots at all. (See Appendix B.) The Supreme Court of Ohio in *State ex rel. Hawke* v. *Myers,* 132 O. St. 18, 4 N. E. 2d. 397 (1936), upheld the constitutionality of an Ohio act placing only presidential and vice-presidential candidates on the ballot. Similar provisions for New York voting machines were sustained in *Thomas* v. *Cohen, et al.,* 146 Misc. 835, 262 N. Y. S. 320 (1933), the court stating that mandamus would probably lie to force an elector to vote for his party's nominee for President and Vice-President. (262 N. Y. S. 326).

The court below, unless it would hold unconstitutional the procedure in twenty-one states, would have to say that the names of electors may be omitted entirely from the ballot, but that legislatures may not constitutionally require electors to adhere to a custom of over one hundred years' standing. A statement of Chief Justice Hughes is apposite:

> "General acquiescence cannot justify departure from the law, but long and continuous interpretation in the course of official action under the law may aid in removing doubts as to its meaning. This is especially true in the case of constitutional provisions governing the exercise of political rights and hence subject to constant and careful scrutiny. Certainly, the terms of the constitutional provisions furnish no such clear and definite support for a contrary construction as to justify disregard of the established practice in the states."

Smiley v. *Holm*, 285 U. S. 355, 369 (1932).

Early Supreme Court cases attest to the efficacy of custom and usage as a guide to constitutional meaning. E.g., *Stuart* v. *Laird*, 1 Cranch 299, 309 (1803). And Mr. Justice Frankfurter has stated: "Even constitutional power, when the text is doubtful, may be established by usage." *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 525 (1940).

The court below may not rely on the text of the Constitution. No prohibition against pledged electoral votes is there; no provision for free electoral college discretion appears. Thus, custom has not changed *the text*. At most, only the "expectations" of some of the framers, unarticulated in the organic document, have been altered.

Even in the absence of statutory mandate, courts of various states have required, in effect, that electors vote for their party's nominee.

State ex rel. Nebraska Republican Committee v. *Wait*, 92 Neb. 313, 138 N. W. 159, 43 L. R. A. (N. S.) 292 (1912), mentioned above, is precisely in point. In 1912, at an April

Republican primary, electors were nominated and voters expressed a choice of Roosevelt for President. However, the National Republican Convention, meeting in June, chose Taft as its presidential nominee. At a July Republican State Convention the majority of the delegates voted to abandon Taft and support Roosevelt, the Progressive Party nominee. Thereupon, the Progressive Party in Nebraska nominated electors, six of whom had been nominated Republican electors. The minority group in the Republican party in Nebraska then established its own slate of electors for Taft and petitioned for mandamus to compel the Secretary of State of Nebraska to print the names of the Taft men under the Republican column on the ballot. The Supreme Court of Nebraska affirmed the granting of the writ of mandamus, holding that the lower court had properly ordered the Secretary of State to remove the Roosevelt electors from the Republican column and to replace them with Taft electors. The Court's rationale has been discussed previously.

It is little short of fraudulent for electors to run under the Democratic column, and then be able to vote in the electoral college for nominees for other parties. Since the Alabama Democratic electors voted for Thurmond in 1948, Alabama voters were totally unable to vote for President Truman, if they so desired. The lower court has implemented a potentially similar situation in 1952.

There are other practical reasons why electors should be required to vote for the national party nominee. Because of years of custom, the people have considered the merits of only the candidates for President and Vice-President. Usually, most of the voters know nothing of the persons who are candidates for electors. And they have ignored the electoral candidates for a good reason.

"They (the electors) have no duties to perform which involve the exercise of judgment in the slightest degree. . . . Their sole function is to perform a service which has come to be nothing more than clerical —to cast, certify, and transmit a vote already pre-

> determined. . . . They are in effect no more than messengers whose sole duty is to certify and transmit the election returns."
>
> *Spreckles* v. *Graham,* 194 Cal. 516, 531, 228 P. 1040, 1045 (1924).

See also: *Hodge* v. *Bryan,* 149 Ky. 110, 148 S. W. 21 (1912). The reasoning of those two cases is designed to show that electoral duties are so perfunctory that the electors should be nominated by convention even though nominations for state and public offices generally are made by primary election.

The court below has made a travesty of the electoral system as it now exists by saying that national elections do not involve merely a choice among presidential and vice-presidential nominees.

Democratic electors, by statements that they will not vote for the National Party nominee, will be acting in a manner totally inconsistent with their nomination. It is a contradiction resulting in a nullity to allow electors to represent the Democratic Party and to allow them simultaneously to vote against the Democratic nominee.

The following annotation at 43 L. R. A. (N. S.) 284, is pertinent:

> "Irrespective of whether any power can legally compel the elector to vote the will of either his national party or of his state party, it is obvious that a state may enact such election laws as will practically prevent the election of any man not morally bound to vote for the nominees of his party's national convention, or in the same way it might secure the election of men who are obliged to vote the will of the state party."

And further (p. 287):

> "The purpose of such legislation is briefly stated in 26 Harvard Law Review, p. 353: 'But the whole purpose of conferring the right to use the party name on the ballot is to enable voters, without personal knowledge of the individual nominee, to vote for men supporting

the party principles. If the representation on the ballot is deceptive, the law is more than nullified. There is certainly no injustice to the nominee in depriving him of his right when he is making an unconscionable use of it to defraud the voters.' "

Petitioner urges this court to grant certiorari and to reverse the court below. That decision stands alone. And this Court has spoken in the *McPherson* and *Green* cases.

An observation of Thayer in his *Legal Essays* is most penetrating:

> "And so it happens, as one looks back over our history and the field of political discussions in the past, that he seems to see the whole region strewn with the wrecks of the Constitution—of what people have been imagining and putting forward as the Constitution. That it was unconstitutional to buy Louisiana and Florida; that it was unconstitutional to add new states to the Union from territory not belonging originally to it; that it was unconsitutional to govern the territories at all; that it was unconstitutional to charter a bank, to issue paper money, to make it legal tender, to enact a protective tariff,—that these and a hundred other things were a violation of the Constitution has been solemnly and passionately asserted by statesmen and lawyers. Nothing that is now going forward can exceed the vehemence of denunciation, and the pathetic and conscientious resistance of those who lifted up their voices against many of these supposed violations of the Constitution. The trouble has been, then as now, that men imputed to our fundamental law their own too narrow construction of it, their own theory of its purposes and its spirit and sought thus, when the question was one of mere power, to restrict its great liberty." (Thayer, *Legal Essays*, p. 158 (1908).)

Nothing is more vital to representative democracy than a well informed electorate. An imperative corollary is that voters know those persons for whom they vote, know the principles for which those persons stand, and that they not leave the ultimate decision involving selection of candidates

for high office to a handful of electors who may arbitrarily flout the will of the majority as expressed by their votes. This latter course is precisely the path laid out by the Alabama Court. It forces the voters of Alabama to abdicate their right and privilege to select the President of the United States, and to leave this vital matter to a few electors.

Another significant concept of American democracy, as it has developed through one hundred and sixty years of successful operation, is responsible party government. In modern history the United States and England are the best examples of successful representative democracies. Students of the two governments generally concede that their strength is in their ability to resolve all political shades of opinion into two powerful responsible parties. We have witnessed the spectacle of splinter parties in other countries of the world. France is an outstanding example of the deleterious effect of splinter parties. The Weimar Republic in Germany preceded the rise of Hitler. Weak and divided rule in Russia contributed to the ascension of Lenin and Stalin.

The Alabama Supreme Court has undermined effective party organization in Alabama. It is immaterial, that court holds, whether respondent and his group are in the majority or minority. If they are in the minority, that court has enabled them to impose their will on the majority. And the vastness of respondent's success is incredible. For respondent would have to admit that he and his group cannot command a majority at either the Democratic National Convention or in the State Department Executive Committee. Yet he persuaded the Alabama Court to tell the voters and people of Alabama that the Federal Constitution enables him and his group to pose as Democrats, and at the same time oppose all known regularly constituted Democratic organizations.

A free electorate is highly desirable. And a free electorate is impossible where through subterfuge the people do not know those persons for or against whom they vote.

They vote for these persons, in large part, because of the party under whose banner they stand. But the Alabama Court tells us that respondent and his group must, by Constitutional command, decide for several million people in Alabama who should be President of the United States. If respondent and his group select Mr. X, whom no one in Alabama has ever heard of, this result, the Alabama Court holds, is dictated by the Federal Constitution. This is so, under the theory below, because an elector must exercise freely his judgment in the selection of the nation's President. This interpretation places the United States Constitution at odds with all concepts of the proper operation of a representative democracy. Democracy thrives on secret ballots, but not on secret elections. Respondent defines democracy in terms of his unfettered freedom to act as capriciously as he deems the situation requires. And he would sacrifice the principle of party government which has made this nation great for a purported constitutional right to act as arbitrarily as he pleases. The Alabama Supreme Court has apparently adopted his views.

The Democratic Committee, by adopting a party loyalty pledge, has not dictated respondent's electoral vote. The Committee action means simply that if respondent is not a Democrat and cannot resolve his differences with a majority of both national and state Democrats, he must seek political affiliation elsewhere. Respondent may run as a Republican or as a member of any other political party. We submit he may not successfully claim a constitutional privilege to run as a Democrat and vote as a Republican.

Respondent has made clear his intention to announce well in advance to the voters that he will under no circumstances vote for certain Democrats should they become the Democratic nominee for President. If respondent has a constitutional right to run as a Democratic elector and vote as he pleases when he announces his intention in advance, others have that same constitutional right when they are secret or deceitful about their real intent and mask from the voters until after election day their real purposes and

allegiances. It is impossible for the court below to read into the Federal Constitution any limitation on the alleged principle on which its decision rests that such principle applies only where the electors have advised the voters in advance of their intent to bolt the party. If a political party has no positive duty to assure the voters that electors who run under the party standard will vote for the party nominees, we submit that at least our Constitution does not require that the party do nothing to prevent such deceit of the voters.

If voters are not entitled as a matter of right to assurance when they vote for a candidate for elector in the Democratic primary election, that such candidate will vote for the Democratic nominee for President, surely there is no constitutional prohibition against the voters having this assurance.

B.

The Committee action under attack in this case is a pledge to aid and support the nominees of the Democratic National Convention, required as a condition for participation as a candidate for Democratic Primary nomination in Alabama. Elector-candidates are included.

It is submitted that even full and untrammeled electoral choice does not mean free electoral college vote plus the right to be a Democrat or a Republican regardless of the political qualifications fixed by those parties. Certainly, even under the Alabama Court's interpretation of the Federal Constitutional provisions applicable to presidential elections, Alabama's electors have no constitutional right to go to the electoral college via the Democratic primary.

The Democratic party can prevent their running as Democrats if they are unwilling to pledge support to the Democratic nominees. If they want free choice, then they must run as independents or under the auspices of some party requiring no loyalty pledge. Furthermore, the decision to run as a Democratic candidate for elector constitutes in itself a free exercise of electoral discretion.

It is no answer to reply that if an elector is to be successful in his quest for general election in Alabama he must run as a Democrat since he would lose as a Republican or Independent. A grave constitutional issue is involved in this case. It is a serious thing to strike down the action of the State Democratic Committee, based on an Alabama statute, as violative of the Federal Constitution. Such an answer ignores Chief Justice Marshall's injunction that "it is a Constitution we are expounding." *McCulloch* v. *Maryland*, 4 Wheat. 316. The Federal Constitution may not be tailored to afford political protection for non-Democrats by allowing them to run as Democrats. Nor may that Constitution be given one interpretation in Alabama and another in New York because of existent political peculiarities.

The court below rejected a hypothetical analogy demonstrating the propriety of a loyalty pledge for electors who desire to become candidates in the Alabama Democratic primary. If the Committee had appointed eleven electoral candidates to run in the November election, Title 17, Section 336, Code, gives the Committee such power, and if the Committee had selected its candidates for elector according to the sole criterion of whether or not these candidates would pledge support to the presidential and vice-presidential nominees of the Democratic National Convention, we submit that such action would not violate Article II, Section 1 or the Twelfth Amendment.

The legality of this hypothetical Committee action was sustained in *Seay* v. *Latham*, 143 Tex. 1, 182 S. W. 2d 251 (1944). The facts are almost precisely similar to those assumed in the above example. The May Texas Democratic Convention selected 23 electors who were absolved from obligation to support the nominees of the Democratic National Convention. Their names were certified to the Secretary of State. The National Convention nominated Roosevelt and Truman. Fifteen of the May nominees announced that they would not vote for Roosevelt and Truman in the electoral college. Whereupon the State party

held a September convention, withdrew the nomination of the "May fifteen" and nominated fifteen substitutes, who would support the nominees of the National Convention. Mandamus issued to the Secretary of State to compel him to replace the previously certified "May nominees" with the "September nominees."

The Texas court stated the matter was clearly one "within the inherent power of the Party." (182 S. W. 2d 255.) Further: "The power to determine the policies of the Party, including the power to determine who shall represent it in the selection of the President and Vice-President of the United States, when not otherwise provided by statute or by rule of the association, resides in the State Convention of the Party." (182 S. W. 2d 253.) And again: "A presidential elector is selected by the Party as its nominee primarily to effectuate its policies and register its will in respect to a particular candidate. *McPherson* v. *Blacker*, 146 U. S. 1, 146 S. Ct. 3, 36 L. Ed. 869."

We submit that *Seay* v. *Latham*, supra, is correct, and that *a fortiori*, the Committee may exact a similar pledge as a condition for becoming a candidate for nomination by primary election.

The decision below stated that *Smith* v. *Allwright*, 321 U. S. 649 (1944) has created a "legal status" in primary elections. The precise meaning of this phrase is cloudy. Perhaps it means that because the lower court has decided that Article II, Section 1 and the Twelfth Amendment command free electoral discretion, political parties may not exact advance pledges such as the one at bar even as a condition for primary participation on the authority of *Smith* v. *Allwright*, supra.

The complete answer is that *Smith* v. *Allwright* holds that a Negro may not be barred from voter participation in a party primary election solely because of his color. Such action is state action violative of the Fourteenth and Fifteenth Amendments. The exercise of voter franchise is insulated against such invidious discrimination, and since

the general right to vote is involved, such insulation extends to all stages of the election process.

However, a presidential elector is assured no general right of franchise under any interpretation of the Federal Constitution. His constitutional role is impersonal in the sense that it is merely part of the constitutional machinery for electing a President and Vice-President. If the framers had been creating constitutionally protected personal rights in electors, it would seem that they would have spelled out the safeguard. Certainly other constitutional sections insuring personal rights contain specific protective language.

Electors are state officers when elected. *In Re Green*, 134 U. S. 377; *Burroughs* v. *U. S.*, 290 U. S. 534 (1934). However, the due process clause does not preserve a right to state political office either as a property right or as a matter of liberty. *Snowden* v. *Hughes*, 321 U. S. 1, 7 (1944). There is no allegation or proof of invidious discrimination, thus no equal protection considerations are present. Nor may respondent invoke the privileges and immunities clause. *Snowden* v. *Hughes*, supra, p. 7.

If electors have no constitutional right to run in primaries, the Committee action at bar is not prohibited by *Smith* v. *Allwright*, 321 U. S. 649, under any interpretation of Article II, Section 1 and the Twelfth Amendment.

Even if the court below were correct in its notion that these constitutional sections command free electoral choice, only on some theory that the sections proscribe even a voluntary restraint would *Smith* v. *Allwright* be at all apposite. And such a theory exceeds the bounds of reason.

This goes to the root of the matter. Since electors have no constitutionally protected personal right to run in a primary (see above); since the constitution does not make choice to run in a given primary a coerced and, therefore, invalid one, merely because the candidate foresees success only with that party's endorsement; since the Twelfth Amendment and Article II, Section 1 create no personal rights in electors, but merely establish a scheme for choos-

ing a President, then the court below must say that even a voluntary pledge in advance of electoral vote violates these sections in order to invoke *Smith* v. *Allwright* to invalidate the Committee action at bar. Certainly, the court below did not intend to go this far.

C.

The discussion in the previous sections of the "Argument" demonstrates that respondent has shown no violation of a constitutional right accruing to him, and that the court below erroneously found any constitutional command that respondent should be allowed to run as a Democratic primary candidate without having to comply with the requisite loyalty pledge. Neither respondent nor the court below has discovered how respondent has been injured in his constitutional rights. This is so no matter what view one takes of the meaning of Article II, Section 1 and the Twelfth Amendment.

It is submitted that constitutional questions are not properly decided *in vacuo*. A basic tenet of constitutional law was enunciated by this Court in *Liverpool, etc. S. S. Co.* v. *Comrs. of Emigration*, 113 U. S. 33, 39 (1885):

> "It (the Supreme Court) has no jurisdiction to pronounce any statute, either of a state or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the *legal rights* of litigants in actual controversies." (Emphasis supplied.)

Absent a personal or property right one has no standing to attack the validity of a statute. *Columbus and Greenville Ry.* v. *Miller*, 283 U. S. 96, 99-100 (1931):

> "The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws."

Furthermore, one must show that he has been injured by the operation of the statute he is attacking. *Tyler* v. *The Judges*, 179 U. S. 405 (1900).

These well-settled concepts have been reiterated many times in decisions of this Court. See, e. g.: *Fairchild* v. *Hughes*, 258 U. S. 126 (1922); *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923); *Doremus* v. *Board of Education*, 342 U. S. —— (1952).

We submit, of course, that all these cases apply to attacks on the validity of the primary regulations of political parties. Therefore, the court below erroneously decided to adjudicate the constitutional issues in this case.

CONCLUSION.

For the foregoing reasons, and for the reasons stated in petitioner's application for stay which was filed on March 10, 1952, petitioner's application for stay should be granted, a writ of certiorari should be granted, and the judgment below should be reversed.

Respectfully submitted,

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Certificate.

I hereby certify that I have mailed, properly stamped and addressed, a copy of the foregoing petition for writ of certiorari to Horace C. Wilkinson, Esq., opposing counsel of Birmingham, Alabama, on this the day of March, 1952.

.....

Of Counsel.

APPENDIX "A."

RELEVANT ALABAMA ELECTION STATUTES APPEARING IN ALABAMA CODE, 1940, TITLE 17:

Sec. 75. Presidential electors and congressmen; when elected.—Electors for president and vice-president of the United States shall be elected on the first Tuesday after the first Monday in November, 1940, and every fourth year thereafter; a member of congress from each congressional district shall be elected on the first Tuesday after the first Monday in November, 1940, and every second year thereafter.

Sec. 222. Presidential electors and representatives in congress to be elected.—On the day prescribed by this Code there are to be elected, by general ticket, a number of electors for president and vice-president of the United States equal to the number of senators and representatives in congress to which this state is entitled at the time of such election; and there shall be elected one representative in congress for each congressional district.

Act. No. 386, General Acts of Alabama 1945, p. 605:

Sec. 1. Section 226 of Title 17 of the 1940 Code of Alabama is hereby amended to read as follows: "Section 226: The electors of president and vice-president are to assemble at the office of the Secretary of State, at the seat of government at twelve o'clock noon on the second Tuesday in December next after their election, or at that hour on such other day as may be fixed by congress, to elect such president and vice-president, and those of them present at that hour must at once proceed by ballot and plurality of votes to supply the places of those who fail to attend on that day and hour, and shall cast their ballots for the nominee of the national convention of the party by which they were elected."

Act No. 557, General Acts of Alabama 1951, p. 973:

Sec. 1. That Section 226 of Title 17 of the Code of Alabama of 1940 be, and the same hereby is, further amended to read as follows:

"Section 226. Electoral meeting and supply of vacancies, —The electors of president and vice-president are to assemble at the office of the secretary of state, at the seat of government at twelve o'clock noon on the second Tuesday in December next after their election, or at that hour on such other day as may be fixed by congress, to elect such president and vice-president, and those of them present at that hour must at once proceed by ballot and plurality of votes to supply the places of those who fail to attend on that day and hour."

Sec. 336. Election by party as to whether it will come within primary law.—A primary election, within the meaning of this chapter, is an election held by the qualified voters, who are members of any political party, for the purpose of nominating a candidate or candidates for public or party office. Primary elections are not compulsory. A political party may, by its state executive committee, elect whether it will come under the primary election law. All political parties are presumed to have accepted and come under the provisions of the primary election law, but any political party may signify its election not to accept and come under the primary election law by filing with the secretary of state, at least sixty days before the date herein fixed for the holding of any general primary election, a statement of the action of its state executive committee, certified by its chairman and secretary, which statement shall contain a copy of the resolution or motion adopted declining to accept and come under the primary election law. If a political party declines to accept and come under the primary election law it shall not change its action and accept and come under the primary election law until after the next general election held thereafter. The state executive committee of a political party may determine from time to time what party officers shall be elected in the primary; provided, candidates for all party offices shall be elected under the provisions of this chapter unless the method of their election is otherwise directed by the state executive committee of the party holding the election.

Sec. 341. Committees.—There may be provided a committee of each party for the state and each political subdivision of the state, including counties and municipalities, said committees to be selected in such manner as may be

provided for by the governing authority of each party, but if there shall not be elected or chosen any committee for any county or municipality, then all the powers which could be exercised by any such committee shall be vested in the state executive committee, under such rules and regulations as the governing authority of the party may designate; provided, however, that should no committee be elected or chosen from any municipality in the state, then the executive committee of the county in which said municipality is located shall exercise the powers and perform the duties of the executive committee of such municipality. The state executive committee may provide for the selection of any such committee.

Sec. 344. Certification of names of candidates by chairman.—The chairman of the state executive committee of each party entering a primary election shall, not less than forty days prior to the date of holding the election, certify to the secretary of state the names of all candidates for nomination to federal, state, circuit, and district offices, the state senate and house of representatives, and all other candidates, except candidates for county offices. The chairman of the county executive committee of each party entering the primary election shall, not less than forty days prior to the date of holding the election, certify to the probate judge the names of all candidates for nomination to county offices. The secretary of state shall, not less than thirty days prior to the date of holding the primary election, certify to the probate judge of every county in which the election is to be held the names of the candidates for nomination to federal, state, circuit, and district offices, the state senate and house of representatives, and all other candidates, except candidates for county offices. The probate judge of each county shall have the ballots prepared for the primary election. If a legally qualified candidate for nomination to an office is unopposed when the last date for certifying candidates has passed, his name shall not be printed on the ballots to be used in the primary election, and he shall be the nominee of the party with which he has qualified for the office. The probate judge shall have the ballots so printed that the names of the opposing candidates for any office to be voted for by the voters of more than one county shall, as far as practicable, alternate in

position upon the ballot so that the name of each candidate shall occupy, with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots. When printed, the ballots shall be distributed impartially and without discrimination by the probate judge. (as amended)

Sec. 345. Candidate must be legally qualified to hold office.—The name of no candidate shall be printed upon any official ballot used at any primary election unless such person is legally qualified to hold the office for which he is a candidate, and unless he is eligible to vote in the primary election in which he seeks to be a candidate and possesses the political qualifications prescribed by the governing body of his political party.

Sec. 347. Who may vote in primary.—All persons who are qualified electors under the general laws of the State of Alabama, and who are also members of a political party entitled to participate in such primary election, shall be entitled to vote therein and shall receive the official primary ballot of that political party, and no other; but every state executive committee of a pary shall have the right, power and authority to fix and prescribe the political or other qualifications of its own members, and shall, in its own way, declare and determine who shall be entitled and qualified to vote in such primary election, or to be candidates therein, or to otherwise participate in such political parties and primaries; and the qualifications of electors entitled to vote in such primary election shall not necessarily be the same as the qualifications for electors entitled to become candidates therein; provided, that nothing herein contained shall be so construed as to prohibit any state executive committee of a party from fixing assessments or such other qualifications, as it may deem necessary, for persons desiring to become candidates for nomination to offices at a primary election, but such assessments shall not exceed two per cent of one year's emolument from all sources, of the office sought, and for an unremunerative or party county office it shall not exceed five dollars, or twenty-five dollars for an unremunerative or party office to be filled by the vote of a subdivision greater than one county, or one

hundred dollars for an unremunerative or party office filled by the vote of the whole state.

Sec. 348. Filing declaration of candidacy.—Any person desiring to submit his name to the voters in a primary election shall, not later than March first, next preceding the holding of such primary election, file his declaration of candidacy in the form prescribed by the governing body of the party with the chairman of the county executive committee if he be a candidate for a county office, and with the chairman of the state executive committee, if he be a candidate for any office except a county office, and in like manner, and not later than March first, next preceding the holding of such primary election, pay any assessments that may be required to be paid by him. (as amended)

Sec. 350. Official ballots and election stationery.—Separate official ballots and other election stationery and supplies for each political party shall be printed and furnished for use at each election district or precinct, and shall be of a different color for each of the political parties participating in such primary election. All ballots for the same political party shall be alike, except as herein otherwise provided, printed in plain type, and upon paper so thick that the printing cannot be distinguished from the back. Across the top of the ballot shall be printed the words, "Official Primary Election Ballot." Beneath this heading shall be printed the year in which said election is held and the words "Democratic Party" or "Republican Party" or other proper party designation. Each group of candidates to be voted on shall be preceded by the designation of the office for which the candidates seek nomination, and in the proper place shall be printed the words, "Vote for one", or "Vote for two", (or more) according to the number to be elected to such office at the ensuing election. At the bottom of the ballot and after the name of the last candidate shall be printed the following, viz.: "By casting this ballot I do pledge myself to abide by the result of this primary election and to aid and support all the nominees thereof in the ensuing general election." Should any voter scratch out, deface or in any way mutilate or change the pledge printed on the ballot, he shall not be considered or held to have repudiated or to have refused to take the pledge, but shall, conclusively, be presumed and held to

have scratched out, defaced, or mutilated or changed same for the sole purpose of identifying his ballot; and accordingly such ballot shall be marked "Spoiled Ballot" and shall not be counted.

Sec. 389. Power of state committee to provide rules of party procedure.—The state executive committee may prescribe such other additional rules governing contests and other matters of party procedure as it may deem necessary, not in conflict with the provisions of this chapter.

Sec. 145. Names of candidates placed on ballots; certificate of nomination.—The probate judge of each county shall cause to be printed on the ballots to be used in their respective counties, the names of all the candidates who have been put in nomination by any caucus, convention, mass meeting, primary election, or other assembly of any political party or faction in this State, and certified in writing and filed with him not less than sixty days previous to the day of election. The certificate must contain the name of each person nominated and the office for which he is nominated, and must be signed by the presiding officer and secretary of such caucus, convention, mass meeting, or other assembly, or by the chairman and secretary of the canvassing board of such primary election.

In case of a person to be voted for by the electors of the whole state or of an entire congressional district, judicial circuit, or senatorial district for any state or federal office, the certificate of nomination must be filed in the office of the secretary of state not less than sixty days before the day of election; and the secretary of state must thereupon immediately certify to the judge of probate of each county in the state, in case of an officer to be voted for by the electors of the whole state, and the judges of probate of the counties composing the circuit or district, in case of an officer to be voted for by the electors of a circuit or district, upon suitable blanks to be prepared by him for that purpose, the fact of such nomination and the name of the nominee or nominees and the office to which he or they may be nominated.

The judge of probate shall also cause to be printed upon the ballots, the name of any qualified elector who has been requested to be a candidate for any county or municipal office by written petition signed by at least twenty-five

electors qualified to vote in the election to fill said office, when such petition has been filed with him before the first Tuesday in May in the year in which a state-wide primary election is held.

The secretary of state shall also certify to the judge of probate of the several counties, as the case may be, the name of any qualified elector who has been requested to be a candidate for any state or federal office by written petition signed by at least three hundred electors qualified to vote in the election to fill said office provided such petition is filed with the secretary of state before the first Tuesday in May in the year in which a state-wide primary election is held. The judge of probate shall cause to be printed upon the ballots, the name, or names, of such qualified elector or electors, as the case may be.

Provided, however, that the judge of probate of the several counties in this state are hereby prohibited from causing to be printed on the ballot to be used in their respective counties, the name of any independent candidate for any state, county, or federal office who has not filed his declaration to become such a candidate before the first Tuesday in May in the year in which a state-wide primary election is held. (As amended)

Sec. 138. Ballots; how printed.—The ballots printed in accordance with the provisions of this chapter shall contain the names of all candidates nominated by caucus, convention, mass meeting, primary election, or other assembly of any political party or faction, or by petition of electors and certified as provided in Section 145 of this title, but the name of no person shall be printed upon the ballots who may, not less than twenty days before the election, notify the judge of probate in writing, acknowledged before an officer authorized by law to take acknowledgments, that he will not accept the nomination specified in the certificate of nomination or petition of electors. The name of each candidate shall appear but one time on said ballot, and under only one emblem.

Sec. 155. Ballots for independent candidates.—The elector may write in the column under the title of the office the name of any person whose name is not printed upon the ballot for whom he may desire to vote. In case of nomination by independent bodies, the ballot shall be so arranged that at

the right of the last column for party nomination the several tickets of the names of the independent candidates shall be printed in one or more columns according to the space required, having above each of the tickets the political or other names selected to designate such independent nominations. The ballot herein provided shall be substantially in the following form, viz: . . .

Sec. 388. New primary in case contest cannot be decided.—If, upon the hearing of any contest for any office, as provided for in this chapter, the committee, after an investigation and hearing of the contest, shall determine that it is impossible from the evidence before it to decide who is the legally nominated candidate for the office contested, it shall have the right and authority to direct a new primary election for the nomination to any such office, but where any action is taken by any county executive committee, either person to the contest, in the same manner as herein provided for in the case of appeals from the action of any county committee, may take an appeal to the state executive committee, which shall be the court of final appeal in all party contests of nominations; provided, that upon hearing of any contest or appeal, as provided for in this chapter, which is not referred to and decided by a sub-committee fifteen members of any such state executive committee shall constitute a quorum for the hearing and determining of such contest, or appeal, provided further, that the entire committee be notified of the meeting in the usual way.

APPENDIX "B"

RELEVANT STATUTES IN THOSE STATES WHICH PROVIDE THAT THE NAMES OF CANDIDATES FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES SHALL APPEAR ON GENERAL ELECTION BALLOTS IN LIEU OF THE NAMES OF CANDIDATES FOR PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTORS.

CALIFORNIA

Deering's California Code, Elections:

§ 3003. Presidential Candidates and Electors. Whenever a group of candidates for presidential electors equal in number to the number of presidential electors to which

this State is entitled filed a nomination paper with the Secretary of State pursuant to this chapter, the nomination paper may contain the name of the candidate for President of the United States and the name of the candidate for Vice President of the United States for whom all of those candidates for presidential electors pledge themselves to vote.

§ 10555. Convening and Voting for President and Vice-President: Party Vote. The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President of the United States, who are, respectively, the candidates of the political party which they represent, one of whom, at least, is not an inhabitant of this State.

COLORADO

1935 Colorado Statutes Annotated, Chapter 59:

§ 197. (As amended) Form of ballot.—Every ballot, intended for the use of voters, shall contain the names of all candidates for offices to be balloted for at that election, whose nominations have been duly made and accepted as herein provided, and who have not died or withdrawn, and shall contain no other names of persons except that when presidential electors are to be elected, their names shall not be printed upon the ballot, but in lieu thereof, the names of the candidates of their respective parties or political groups for president and vice-president of the United States shall be printed together in pairs under the title "presidential electors." Such pairs shall be arranged in alphabetical order of the names of the candidates for president in the manner provided for in section 198 of this chapter. A vote for any such pair of candidates shall be a vote for the electors of the party or political group by which such candidates were named and whose names have been filed with the secretary of state. . . .

CONNECTICUT

Connecticut General Statutes (1949 Revision):

§ 1043. Vote for presidential electors. When an election is to be held for the choice of electors of president and vice-president of the United States, if any political party shall have nominated candidates for president and vice-

president of the United States, and electors to vote for such presidential and vice-presidential candidates shall have been nominated by a political convention of such party in this state, or in such other manner as shall entitle the names of such electors to be placed upon the ballots or voting machines to be used in such election, it shall be lawful for the secretary and for every other official charged with the preparation of ballots or voting machines to be used in such election, in lieu of placing the names of such electors of president or vice-president on such ballot or voting machine, to place on such ballots or voting machines a space with the words "Presidential electors for (here insert the last name of the candidate for president, the word 'and' and the last name of the candidate for vice-president)"; and a vote cast by making a crossmark to the left of such space, or by registering a vote in such space in the manner required by the voting machine, shall be counted, and shall be in all respects effective, as a vote for each of the presidential electors representing such candidates for president and vice-president.

DELAWARE

Laws of Delaware 1943, Chapter 119, page 403:

Section 1. . . . There shall be two separate ballots, to-wit: a Presidential and Vice-Presidential Ballot and a State, County and District Ballot. The Clerks of the Peace for the several Counties shall cause to be printed on the Presidential and Vice-Presidential Ballot, herein provided for, the names of the candidates nominated for President and Vice-President by the parties recognized by them as political parties within the meaning of this Chapter, as shall be certified to them by the Secretary of State; . . .

On the sample ballot set out in Section 3 of the above Act appears the following statement:

"A vote for the candidates for President and Vice-President shall be a vote for the electors of such party, the names of whom are on file with the Secretary of State."

ILLINOIS

Illinois Revised Statutes 1951, Chapter 46:

§ 21-1. . . . (b) The names of the candidates of the several political parties or groups for electors of President

and Vice-President shall not be printed on the official ballot to be voted in the election to be held on the day in this Act above named. In lieu of the names of the candidates for such electors of President and Vice-President, immediately under the appellation of party name of a party or group in the column of its candidates on the official ballot, to be voted at said election first above named in section 2-1, there shall be printed within a bracket the name of the candidate for President and the name of the candidate for Vice-President of such party or group with a square to the left of such bracket. Each voter in this State from the several lists or sets of electors so chosen and selected by the said respective political parties or groups, may choose and elect one of such lists or sets of electors by placing a cross in the square to the left of the bracket aforesaid of one of such parties or groups. Placing a cross within the square before the bracket enclosing the names of President and Vice-President shall not be deemed and taken as a direct vote for such candidates for President and Vice-President, or either of them, but shall only be deemed and taken to be a vote for the entire list or set of electors chosen by that political party or group so certified to the Secretary of State as herein provided. Voting by means of placing a cross in the appropriate place preceding the appellation or title of the particular political party or group, shall not be deemed or taken as a direct vote for the candidates for President and Vice-President, or either of them, but instead to the Presidential vote, as a vote for the entire list or set of electors chosen by that political party or group so certified to the Secretary of State as herein provided. . . .

INDIANA

Burns Indiana Statutes Annotated:

§ 29-3902. Names on ballots—Form.—The names of the candidates for electors of president and vice-president of the United States, of any political party or group of petitioners, shall not be placed on the ballot, but, in arranging and preparing the ballots for the election at which presidential electors are to be elected, the names of the candidates for president and vice-president of the United States, respectively, of such political parties or groups of petitioners, shall be placed in one (1) column on the ballot,

where ballots are used, and on one (1) ballot label, in one (1) column or row, where voting machines are used in the same form and manner as the names are set out in section 120 (§ 29-3903), under the title and device of such political party or group of petitioners, nominating a group of candidates for presidential electors. Wherever the names of the candidates for president and vice-president of the United States, respectively, are so printed, there shall be printed above their respective names the words: "For presidential electors for."

§ 29-3904. Votes cast for president and vice-president construed as votes for electors—Counting, canvassing and certifying of votes.—Every vote cast or registered for the candidates for president and vice-president of any one political party or group of petitioners shall be conclusively deemed to be a vote cast or registered for all of the candidates of such political party or group of petitioners for the presidential electors of such party or group of petitioners, and shall be counted as such. The votes cast or registered for the candidates for president and vice-president of any political party or group of petitioners shall be counted, canvassed and certified in the same manner, and subject to the same penalties and liabilities, as the votes for other candidates.

IOWA

Code of Iowa 1950:

Ch 49, § 49.32 Candidates for president in place of electors. The candidates for electors of president and vice-president of any political party or group of petitioners shall not be placed on the ballot, but in the years in which they are to be elected the names of candidates for president and vice-president, respectively, of such parties or group of petitioners shall be placed on the ballots, as the names of candidates for United States senators are placed thereon, under their respective party, petition, or adopted titles for each political party, or group of petitioners, nominating a set of candidates for electors.

Ch 54, § 54.2 How elected. A vote for the candidates of any political party, or group of petitioners, for president and vice-president of the United States, shall be conclu-

sively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such electors.

KENTUCKY

Kentucky Revised Statutes 1948:

§ 118.070 Persons entitled to have name placed on ballot for regular election. (1) . . . the county clerk of each county shall cause to be printed on the ballots for the regular election the names of the following persons: . . .

(f) Candidates for President and Vice President of the United States, of those political parties and organizations who have nominated presidential electors as provided in KRS 118.090, where the certificate of nomination of such electors has been filed with the Secretary of State within the time prescribed in KRS 118.130.

§ 118.170 Form of ballot; party emblems; method of indicating public questions. . . .

(6) The names of candidates of the several political parties and organizations for electors of President and Vice President of the United States shall not be printed on the ballot, but in lieu thereof, immediately under the party name or device of each party in the column of its candidates on the official ballot, there shall be printed within a bracket the name of the candidate for President and the name of the candidate for Vice President of such party, with a square to the right of the bracket. The placing of a cross within the square to the right of the bracket enclosing the names of candidates for President and Vice President, or in the circle at the head of the column of such party, shall not be deemed and taken as a direct vote for such candidates for President and Vice President, but shall only be deemed and taken to be a vote for the entire list or set of electors chosen by that political party as provided in KRS 118.090.

MARYLAND

Annotated Code of Maryland, Article 33:

§ 99. The form and arrangement of the ballots shall be as follows: All ballots shall contain the name of every

candidate whose nomination for any office specified in the ballot has been certified to and filed according to the provisions of this Article, and not withdrawn in accordance therewith, except that the names of the candidates for the office of Electors of President and Vice-President of the United States shall not be printed on the ballot but in lieu thereof the names of the candidates of each political party for the office of President and Vice-President shall be printed thereon. . . . There shall be left at the right of the surnames of the candidates for President and Vice-President, so formed as to include both names, a sufficient clear square in which each voter may designate by a cross (X) his choice for electors, and a cross (X) placed by the voter in the square opposite the names of the candidates of a party for President and Vice-President shall be deemed and counted as a vote for each of the Presidential Electors of said party named in the certificate of nomination filed according to the provisions of this Article. . . .

§ 197. On the day fixed by law of the United States for choice of President and Vice-President of the United States there shall be elected by general tickets as many electors of President and Vice-President as this State shall be entitled to appoint; provided that the names of the candidates for the office of electors of President and Vice-President of the United States shall not be printed on the ballot but in lieu thereof the names of the candidates of each political party for the office of President and Vice-President shall be printed thereon; and a vote for said candidates for President and Vice-President shall be deemed and counted as a vote for each of the Presidential electors of said party named in the certificate of nomination of such Presidential candidates filed according to the provisions of this Article.

MASSACHUSETTS

Annotated Laws of Massachusetts, Chapter 54:

§ 43. Presidential Electors, Arrangement of Names of Candidates, etc.—The names of the candidates for presidential electors shall not be printed on the ballot, but in lieu thereof the surnames of the candidates of each party for president and vice president shall be printed thereon in the line under the designation "Electors of president and vice president" and arranged in the alphabetical order of the

surnames of the candidates for president, with the political designation of the party placed at the right of and in the same line with the surnames. A sufficient square in which each voter may designate by a cross (X) his choice for electors shall be left at the right of each political designation.

MICHIGAN

Compiled Laws of Michigan 1948:

§ 177.16. . . . At the general November election in the year in which electors of president and vice-president of the United States are elected, a separate ballot shall be printed, upon which shall be printed the names of the candidates for president and vice-president of the United States in the manner provided in section 20 of this chapter.

§ 190.4 Ballot; marking, effect of cross in circle.

Sec. 4. Marking a cross in the circle under the party name of a political party, at the general November election in a presidential year, shall not be deemed and taken as a direct vote for the candidates of the said political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state as in this chapter provided.

MISSOURI

Revised Statutes of Missouri 1949:

§ 111.420. Form of ballot—sample.—1. Every ballot printed under the provisions of this chapter shall contain the names of every candidate whose nomination for any office specified on the ballot has been certified or filed according to the provisions of this chapter, and no other names. The names of all candidates to be voted for in each election district or precinct shall be printed on one ballot; all nominations of any political party or group of petitioners being placed under the party name designated by them in their certificates of nomination or petitions, and the ballot shall contain no other names, except that in place of the names of candidates for electors of president and vice-president of any political party or group of petitioners, there shall be printed within a bracket, immediately below the circle in

the column of said party, with a square to the left of such bracket, the names of the candidates of each political party for president and vice-president. The names of the candidates of the several political parties for electors of president and vice-president shall not be printed on the ballot, but shall after nomination, be filed with the secretary of state.

2. A vote for any of such candidates for president and vice-president shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state. The respective party state committees shall certify in writing the nominations of such presidential and vice-presidential candidates to the secretary of state at some time before the secretary of state is required by law to certify the candidates of the several political parties and groups of petitioners to the several clerks of the county court or to election commissioners. In presidential years an instruction shall be on the ballot as follows: "A vote for names of candidates for president and vice-president is a vote for the electors of that party, the names of whom are on file with the secretary of state."

NEBRASKA

Revised Statutes of Nebraska, 1943:

§ 32-219. Presidential electors; how chosen. In the year 1944 and every four years thereafter, at the general election held on such day as Congress may appoint, each presidential elector nominated by any party or group of petitioners shall receive the combined vote of the electors of the state for the candidates for President and Vice President of such party or group of petitioners, and a vote cast for the candidates for President of the United States shall be a vote for the electors of the respective party or group of petitioners.

§ 32-503. Ballots; form. . . . (3) if the election be in a year in which a President of the United States is to be elected, in spaces separated from the foregoing by a heavy black line and entitled "Presidential Ticket," in black type not less than eighteen point, shall be the names and spaces for voting for candidates for President and Vice President; the names of candidates for President and Vice President for each political party shall be grouped together, each

group enclosed with brackets with one square to the left in which the voter indicates his choice, and the party name to the right according as near as possible to the following form or schedule:

JOHN DOE, President
( ) Republican
RICHARD ROE, Vice President

with a heavy line across the column, separating the group of the different political parties; no blank lines are to be left for writing in names for President and Vice President; . . .

NEW HAMPSHIRE

Public Laws of New Hampshire, 1943, page 13, approved February 9, 1943:

§ 1. Biennial Election Ballots. Amend section 3 of chapter 34 of the Revised Laws by striking out all of said section and inserting in place thereof the following new section: 3. Contents. Every ballot shall contain the name and residence of each candidate who has been nominated in accordance with law, except as hereinafter provided, and shall contain no other name except party appellations. The names and addresses of the presidential electors shall not be printed on the ballot, but in lieu thereof the names of a party's candidates for president and vice-president shall be printed thereon under the designation "Electors of president and vice-president of the United States." In case a nomination is made by nomination papers, the words, Nom. Papers, shall be added to the party appellation.

NEW JERSEY

Revised Statutes Cumulative Supplement of New Jersey, Title 19:

§ 19:14-11. Arrangement of nominees for electors of president and vice-president; directions to voters. The surnames of candidates for president and vice-president of the United States shall be printed in one line preceded by the words "presidential electors for." In the nomination by petition columns the surnames of candidates for president and vice-president shall be followed by the designation mentioned in the petitions filed. In the personal choice

column the voter may write or paste the surnames of candidates for president and vice-president for whom he desires the electors to vote. To the left of the surnames of candidates for president and vice-president of the United States, shall be printed a square, one-half inch in size, accompanied by the following directions to the voter: "To vote for all the electors of president and vice-president mark a cross or plus within the square opposite the surname of president and vice-president."

§ 19:14-4. Head of the ballot; form and contents; instructions. . . .

7. To vote for all the electors of any party, mark a cross or plus in black ink or black pencil in the square at the left of the surnames of the candidates for president and vice-president for whom you desire to vote.

NORTH CAROLINA

General Statutes of North Carolina of 1943:

§ 163-108. Arrangement of names of presidential electors.—The names of candidates for electors of president and vice-president of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination be filed with the secretary of state. In place of their names there shall be printed first on the ballot the names of the candidates for president and vice-president, respectively, of each party or group of petitioners and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state.

PENNSYLVANIA

Purdon's Pennsylvania Statutes Annotated, Title 25:

§ 2878. Presidential electors; selection by nominees; certification; vacancies.

The nominee of each political party for the office of President of the United States shall, within thirty days after his nomination by the National convention of such party, nominate as many persons to be the candidates of his party for the office of presidential elector as the State is then entitled

to. If for any reason the nominee of any political party for President of the United States fails or is unable to make the said nominations within the time herein provided, then the nominee for such party for the office of Vice-President of the United States shall, as soon as may be possible after the expiration of thirty days, make the nominations. The names of such nominees, with their residences and post-office addresses, shall be certified immediately to the Secretary of the Commonwealth by the nominee for the office of President or Vice-President, as the case may be, making the nominations. Vacancies existing after the date of nomination of presidential electors shall be filled by the nominee for the office of President or Vice-President making the original nomination. Nominations made to fill vacancies shall be certified to the Secretary of the Commonwealth in the manner herein provided for in the case of original nominations.

In the official ballot form prescribed by Section 2963 of Title 25, supra, the following instruction appears:

"To vote for a person whose name is not on the ballot, write or paste his name in the blank space provided for that purpose. A cross mark in the square opposite the names of the candidates of any party for President and Vice-President of the United States indicates a vote for all the candidates of that party for presidential elector. To vote for individual candidates for presidential elector, write or paste their names in the blank spaces provided for that purpose under the title 'Presidential Electors.' "

RHODE ISLAND

Public Laws of Rhode Island, 1939-1940, page 739, chapter 818, provides for the use of voting machines in general elections. Section 1 of this Act provides in part as follows:

"Sec. 3. Any type or make of voting-machine approved by the board of elections must meet the following requirements: . . .

"It may also be provided with one device for each party, for voting for all the presidential electors of that party by one operation, and a ballot therefor containing only the words 'Presidential electors for' preceded by the name of that party and followed by the names of the candidates thereof for the offices of president and vice president, and

a registering device therefor which shall register the vote cast for said electors when thus voted collectively; *provided, however,* that means shall be furnished whereby the voter can cast a vote in part for the candidates for presidential electors of one party, and on part for those of one or more other parties or in part or in whole for persons not nominated by any party; . . .

WASHINGTON

Public Laws of Washington, 1935, page 45, chapter 20, approved February 23, 1935:

Section 1. In the years in which presidential elections are held each political party nominating candidates for president and vice-president of the United States and electors of the same shall file with the secretary of state certificates of nomination of such candidates at the time and in the manner and number provided by law. The secretary of state shall certify to the county auditors the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot. The names of candidates for electors of president and vice-president shall not be printed upon the ballots. The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of such political party, whose names have been filed with the secretary of state.

WISCONSIN

Wisconsin Statutes 1949:

§ 6.23. . . . (9) In each year in which there is to be elected a president and vice-president of the United States, there shall be printed and provided for use in each precinct at the general election a separate ballot, to be designed "Presidential Ballot," which shall be substantially in the form annexed, marked "C," except the party candidates shall be arranged from top to bottom according to rank in obtaining votes at the last preceding general election for governor, that is, the party receiving the largest vote will be placed first and the others in their corresponding position. The order of names of independent candidates for president and vice president shall be alphabetical according to the candi-

date for president, and such names shall follow the names of the party candidates for such offices.

(10) (a) At the top of each presidential ballot shall be placed in letters of not less than three-eighths of an inch in length the words "Official Presidential Ballot." Underneath the words "Official Presidential Ballot" and in plain, legible type shall appear the following instruction to voters: "Make a cross (X) or other mark in the square opposite the name of the candidates for whose electors you desire to vote. Vote in ONE square only."

NEW YORK

The New York Election Law, Section 248, prescribes the form of ballots to be used on voting machines. This section reads in part as follows:

"The party emblem for each political party represented on the machine, which has been duly adopted by such party in accordance with this chapter, and the party name or other designation, and a designating letter and number shall be affixed to the name of each candidate, or, in case of presidential electors, to the names of the candidates for president and vice-president of such party. . . ."